



National Rural Electric Cooperative Association

4301 Wilson Boulevard
Arlington, VA 22203-1860
Telephone: (703) 907-5500
TT- (703) 907-5942

December 21, 1995

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of
Microwave Relocation-- WT Docket No. 95-157

Dear Mr. Caton:

The National Rural Electric Cooperative Association (NRECA) hereby submits its reply comments regarding the Federal Communications Commission's Notice of Proposed Rulemaking Rulemaking, FCC 95-426, adopted October 12, 1995, and released October 13, 1995 (WT Docket No. 95-157).

Enclosed are an original plus nine copies of NRECA's reply comments. Please provide a personal copy to each of the Commissioners.

Sincerely,

Ronald K. Greenhalgh
Chief Engineer

RKG/kh

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
JAN 16 1996

| | | |
|-------------------------------------|---|----------------------|
| In the Matter of |) | |
| Amendment to the Commission's Rules |) | WT Docket No. 95-157 |
| Regarding a Plan for Sharing |) | RM-8643 |
| the Costs of Microwave Relocation |) | |

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Pursuant to Section 1.415 and 1.419 of the Federal Communication Commission's (FCC) Rules, the National Rural Electric Cooperative Association (NRECA) hereby submits its reply comments on the Notice of Proposed Rulemaking, FCC 95-426, adopted October 12, 1995 and released October 13, 1995, in the above-captioned proceeding in which the FCC proposes to adopt a plan for sharing the costs of relocating microwave facilities currently operating in the 1850 to 1990 MHZ ("2 GHz") band, which has been allocated for use by broadband Personal Communications Services ("PCS").

I. Introduction

The National Rural Electric Cooperative Association (NRECA) is the national association of more than 1,000 consumer-owned rural electric generation & transmission and distribution systems which supply central station electricity to more than 30 million people in the rural areas of 2600 counties in 46 states. Rural electric cooperatives serve some 75% of the land area and operate about half of all of the miles of electric lines in the United States, providing services to the farthest reaches of our nation. Rural electric systems average 5 consumers per mile of line, compared with an average of 35 consumers per mile of line for other utilities.

The frequencies assigned to electric utilities in the 1850-2200 MHZ band are used for the essential purposes of monitoring and controlling the flow of electric power, communicating in times of natural disaster, and detecting, isolating and solving problems before they result in a major disruption of electric service. The following NRECA member systems have existing frequency assignments in that band:

Alabama Electric Cooperative, Inc.
Altamaha Electric Membership Corp.
Arizona Electric Power Cooperative, Inc.

Basin Electric Power Cooperative
Berkeley Electric Cooperative, Inc.
Big Rivers Electric Corporation
Blue Ridge Electric Cooperative, Inc.
Blue Ridge Membership Corporation
Blue Bonnet Electric Cooperative
Brazos Electric Power Cooperative, Inc.
Cajun Electric Power Cooperative, Inc.
Carroll Electric Cooperative Corp.
Central Electric Power Cooperative
Central Iowa Power Cooperative
Chugach Electric Association, Inc.
Colquitt Electric Membership Corporation
Cooperative Power Association
Corn Belt Power Cooperative
Cuivre River Electric Cooperative, Inc.
Cumberland Electric Membership Corp.
Dairyland Power Cooperative
Deseret Generation & Transmission Cooperative
Dixie Electric Membership Corporation
East Central Electric Association
East Kentucky Power Cooperative, Inc.
East River Electric Power Cooperative, Inc.
Empire Electric Association, Inc.
Federated Rural Electric Association
Flint Electric Membership Corp.
Four County Electric Membership Corp.
Gibson County Electric Membership Corp.
Golden Valley Electric Association, Inc.
Green River Electric Corporation
Guadalupe Valley Electric Cooperative
Hart County Electric Membership Corp.
Henderson-Union Rural Electric Cooperative Corp.
Hoosier Energy Rural Electric Cooperative, Inc.
Intermountain Rural Electric Association
Jackson Electric Membership Corp.
Jasper Newton Electric Cooperative, Inc.
Jefferson Electric Membership Corp.
Johnson County Electric Cooperative Association
KAMO Electric Cooperative, Inc.
Lake Region Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.
Lower Colorado River Authority

Medina Electric Cooperative, Inc.
Minnkota Power Cooperative, Inc.
Mitchell Electric Membership Corporation
Moon Lake Electric Association, Inc.
Navopache Electric Cooperative, Inc.
North Arkansas Electric Cooperative, Inc.
North Georgia Electric Membership Corp.
Northwest Electric Power Cooperative, Inc.
Northwest Iowa Power Cooperative
Owen County Rural Electric Cooperative Corp.
Palmetto Electric Cooperative, Inc.
Petit Jean Electric Cooperative Corp.
Plains Electric Generation & Transmission Cooperative, Inc.
Platte Clay Electric Cooperative, Inc.
Plumas Sierra Rural Electric Cooperative
Rappahannock Electric Cooperative
Rayle Electric Membership Corporation
Runestone Electric Association
Rushmore Electric Power Cooperative
Sam Houston Electric Cooperative, Inc.
San Bernard Electric Cooperative, Inc.
Satilla Rural Electric Membership Corp.
Sho-Me Power Corporation
South Mississippi Electric Power Association
South Texas Electric Cooperative
Southern Illinois Power Cooperative
Southern Maryland Electric Cooperative, Inc.
Southside Electric Cooperative
Southwest Tennessee Electric Membership Corp.
Sumter Electric Cooperative, Inc.
Sunflower Electric Cooperative, Inc.
Talquin Electric Cooperative, Inc.
Tri State Generation and Transmission Association, Inc.
Union Rural Electric Cooperative, Inc.
United Power Association
Valley Electric Association, Inc.
Warren Rural Electric Cooperative Corp.
Western Farmers Electric Cooperative

Each of these NRECA member systems will suffer hardships, in varying amounts, if they are forced to move, without compensation, from this band to less reliable media. The lost spectrum would have to be replaced because operating electrical transmission and distribution systems at reduced reliability is not an option. Reduced reliability from other data and voice

transmission media or leased circuits, lack of suitable frequencies in other private microwave bands, and the expense involved in replacing microwave systems with fiber optic systems or switching to higher frequency bands (where feasible), would all contribute to those hardships. The high costs are largely attributable to the fact that NRECA's member systems operate in sparsely populated areas and their facilities are widely dispersed. Common carrier services that are reliable enough for electric utility operations generally do not exist in these areas, so they would have to be constructed. Substituting fiber optic circuits for the existing frequencies in the 1850-2200 MHz band is unreasonably expensive and impractical. Hundreds of miles of redundant fiber optic installations would be required to provide the reliability necessary for electric utility operations.

II. NRECA Reply Comments

The Notice of Proposed Rulemaking FCC 95-426 (NPRM FCC 95-426) outlines the very extensive comment and deliberation period during the development of the existing relocation procedures for microwave incumbents which were adopted in the Emerging Technologies Docket 92-9. Throughout that period NRECA strongly opposed efforts to arbitrarily require rural electric cooperatives and other utilities to relinquish assigned frequencies in the 1850-2200 MHz band, unless equally reliable communications media would be made available at no additional cost. However, because the FCC accommodated many of the concerns of the rural electric utilities in the final relocation procedures adopted pursuant to Docket No. 92-9, NRECA has been a strong supporter of those procedures.

In addition, Congress has repudiated an attempt to modify the existing framework of the voluntary and mandatory negotiation periods. Since the release of the NPRM FCC 95-426 on October 13, 1995, both the United States House of Representatives and the United States Senate have approved the Conference Report on H.R. 2491, Balanced Budget Act of 1995 (H. Rept. No. 140-347). The bill was cleared for the White House on November 20, 1995. This legislative action comports well with the Commission's statement at Paragraph 3 (NPRM FCC 95-426):

We emphasize that our intent is not to reopen that proceeding [*Emerging Technologies* ET Docket 92-9] here, because we believe that the general approach to relocation in our existing rules is sound and equitable.

The recent legislative action renders moot the footnote (Note 2) to Paragraph 3 of NPRM FCC 95-426. Furthermore, as of the date of the filing of these reply comments, the Senate and House conferees have not indicated any intention of mandating a change to the FCC's relocation procedures while they work to reconcile the differences between the "Communications Act of 1995" (H.R. 1555) and the "Telecommunications Competition and Deregulation Act of 1995" (S. 652). They apparently have found groundless the PCS industry's allegations that the 2 GHz band incumbents are engaged in extortion during relocation negotiations. We expect the FCC will reach the same conclusion regarding similar allegations contained in comments (whether or not they were filed timely) by the PCS licensees in response to NPRM FCC 95-157.

As general reply comments, NRECA continues to oppose any substantive changes to the FCC's established 2 GHz fixed microwave licensing policy and relocation procedures. The development of a cost-sharing plan in order to avoid an area of potential conflict among PCS licensees is desirable but NRECA strongly opposes the reclassification of incumbent licensees which are still operating in the 1850-1990 MHz band on April 4, 2005.

NRECA offers the following specific reply comments on the proposed Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation:

Compensable costs in the formula should not exclude attorney, engineering or other consulting fees deemed to be necessary by the current microwave incumbents. Attorney, engineering and other consulting fees should not be excluded because smaller operations may not have the expertise on staff to help determine these new solutions. Smaller 2 GHz incumbents should not be penalized just because they do not maintain large legal or telecommunications engineering staffs. These costs would not be incurred were it not for mandated relocation so the financial responsibility for them should be borne by the PCS licensee.

Incumbents' systems are not "cookie cutter" products, but one-of a kind, conforming to system needs and local geography. These systems are not designed for commercial use by the public but to provide for very specific internal operational needs of rural electric systems, such as transmission switching and vital internal communications, which are significant contributors to system reliability and the safety of employees and the general public. Electricity cannot be provided without them. Therefore any definition of comparable facilities should be flexible enough to allow for unusual situations.

Comparable facilities definitions are guidelines and therefore cannot be used to determine "good faith" during mandatory negotiations. Because of inherent differences between incumbent systems and possible replacement technologies, comparable facilities will never be so completely defined as to be a "bright line" test for "good faith." Further, "good faith" is not a one-way street: any initial offer made by a PCS auction winner might not be "comparable" and therefore they could be viewed as negotiating in bad faith. There should be no rebuttable presumption that rejection of so-called comparable facilities is bad faith, because the offer of facilities might not be truly comparable. The only way to ensure comparable facilities (and indeed flexible, market-based solutions) is to allow for negotiations.

The FCC's proposal and suggestions from the PCS industry's commentators that good faith is a one-way street do not comport with the real world. Further the FCC's recommendation of rejection of "comparable" facilities is a severe infringement on negotiations, handicapping only the incumbent, not the auction winner.

Current incumbent licensees should retain all rights under their current licenses until comparability is determined during the test period. If a current incumbent with system reliability and safety responsibilities to the public, its employees, other regulators, and interconnected systems, finds that a new system is not comparable, current rules dictate that the relocated incumbent will be moved back to the 2 GHz band. There should be no diminution of these rights.

Licenses of microwave incumbents that are still operating in the 1850-1990 MHz band on April 4, 2005, should not be made secondary on that date. Many rural electric utilities may not feel the impact of emerging technologies for decades. Since there will not be emerging technology providers ready to operate in every part of the nation, many sparsely populated regions will not support the economic development of PCS now or in the foreseeable future. It is these areas that depend the most on the reliable communications paths provided by long-distance fixed microwave paths in the 2 GHz band. If the FCC does not change the rules, all incumbent microwave users, whether they are rural or urban, will have a reasonable period of time to discuss voluntary relocation before being subjected to an involuntary relocation program. NRECA believes that all rights should be retained by incumbents until relocation is successful. Such rights include the right not to be interfered with and the ability to retain co-primary status until relocation is successfully completed. Automatic conversion to secondary status on a date certain (2005) is arbitrary and endangers the ability of rural electric systems to reliably and safely manage the flow of electricity (which requires both voice and data communications for internal operations).

III. NRECA's Rebuttal Comments

A. Personal Communications Industry Association (PCIA):

1. **Comment:** PCIA proposed to eliminate the voluntary negotiation period and have only a one-year mandatory period.

Rebuttal: NRECA believes that changing rules in midstream is not good for anyone, since many relocation agreements are currently being negotiated. In addition, the voluntary period gives incumbents not yet contacted an opportunity to begin fully documenting costs for reimbursement and conducting any necessary studies, if possible, prior to initial contact by an auction winner.

2. **Comment:** PCIA would limit comparable facilities to actual relocation costs, not consulting or legal fees, and that the PCS auction winner should have advance approval over hiring of outside consultants, etc.

Rebuttal: NRECA believes that incumbents wouldn't be encountering these fees without the lobbying by the PCS players to create their industry and move incumbents out of the 2 GHz frequency band; therefore, because PCS auction winners cause the increased costs (consult./atty./engrg.) borne by incumbents, PCS licensees should reimburse the incumbents for them. PCS licensee approval of outside consultants would not result in arms' length good-faith negotiations and would undermine them. Furthermore, it may not be possible to obtain approval before commencing engineering studies needed for relocation (i.e., the auction might not have been held yet). Why penalize an incumbent who comes to the table prepared to negotiate? Prudent business practice requires that incumbents without the in-house expertise hire the outside help they need to ensure a successful relocation.

3. **Comment:** PCIA recommended limiting replacement of facilities to comparable, but not upgraded, systems.

Rebuttal: NRECA believes that this might not be workable if the only technological solution which ensures system reliability is upgrade (analog to digital). While in some cases it might be proper for an incumbent to bear some of the costs of an upgrade in conjunction with a relocation, if the relocation requires an upgrade, then the PCS auction winner should provide the upgrade and pay the costs associated with it.

4. **Comment:** PCIA stated that the FCC should hold incumbent's license during the reliability test period.

Rebuttal: NRECA does not believe that incumbents retaining their 2 GHz licenses until comparability is established will not cause confusion as PCIA asserts. Assuming that the test period commences upon incumbent cut over to the replacement system, a time and date easily verifiable, the expiration of the test period occurs 12 months after the cut over date. There will be no confusion. Nor is a public proclamation by the FCC necessary for this transition period.

B. Pacific Bell Mobile Services (PacBell)

1. **Comment:** PacBell would require both parties to file independent cost estimates with the FCC if negotiations do not conclude fruitfully after the one year voluntary period.

Rebuttal: NRECA believes that the practical effect of such a proposal for rural incumbents who might not be contacted until the voluntary period expires is an immediate and needless filing at the FCC. This would be an undue burden on rural 2 GHz incumbents. The FCC's stated intent is to let the market solve the relocations, not to require an immediate filing at the Commission upon notification by a PCS auction winner.

2. **Comment:** PacBell proposes a good faith penalty for incumbents.

Rebuttal: NRECA believes that : if a "good faith" standard is adopted, the PCS licensees should be penalized for not acting in good faith by revocation of their allocation and automatic renewal of incumbent's license in the 2 GHz band, as well as all attorney, engineering, accounting, personnel, travel and consulting costs incurred by incumbent.

3. **Comment:** PacBell asks that if the mandatory period has expired, that incumbent be converted to secondary.

Rebuttal: PacBell's concern is with negotiations which have failed. They, like PCIA, fail to consider the situation where the PCS auction winner has acted in bad faith. NRECA recommends that the PCS auction winner have its spectrum revoked as an alternative penalty.

7. **Comment:** PacBell recommends that only secondary renewals be approved by FCC after 4/1/96.

Rebuttal: PacBell does not take into account the fact that some rural areas may not have even the beginnings of viable PCS service by 2005

C. Cellular Telephone Industry Association (CTIA):

1. **Comment:** Penalize incumbents who have not reached agreement within voluntary period by making them pay their own relocation costs.

Rebuttal: This doesn't work because, especially in rural areas, incumbents might not even be contacted in the two-year period.

2. **Comment:** Penalize parties who don't negotiate in good faith by revoking licenses and rights to allocation of new spectrum.

Rebuttal: This is okay as long as it applies to both incumbents and PCS auction winners.

3. **Comment:** Incumbents are not entitled to return to their original 2 GHz spectrum.

Rebuttal: FCC must retain this right in the event that replacement systems are not comparable.

4. **Comment:** The rights of the 2 GHz microwave incumbents must be tolled on April 4, 2005 and that the FCC should cease issuing new co-primary microwave licenses in the 2 GHz band.

Rebuttal: CTIA does not seem to recognize that there are areas of this country which will not have PCS service by 2005 (or possibly ever); therefore, those incumbent licensees must retain their primary status until they are relocated and the new system is tested and accepted as comparable by the incumbent.

5. **Comment:** CTIA's attachment Summary of Microwave Relocation "Bloody Shirts"

Rebuttal: NRECA recommends that the Commission not be hasty in its reaction to these accusations. CTIA has not told both sides of the story and even states in its comments that these are "demands" made during negotiations. It is impossible for anyone to know from these snapshots whether these are initial offers, initial counteroffers or responses to inadequate "low-ball" relocation offers made by PCS auction winners. The PCS industry made this document available to the Congress during the development of the balanced budget legislation. Apparently the conferees were not persuaded by this latest exercise in "McCarthyism".

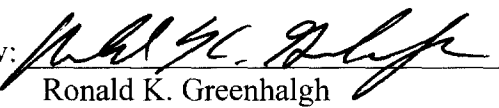
III. Conclusion

In these reply comments, NRECA continues to oppose any substantive changes to the FCC's established 2 GHz fixed microwave licensing policy and relocation procedures. The development of a cost-sharing plan in order to avoid an area of potential conflict among PCS licensees is desirable but NRECA strongly opposes the reclassification of incumbent licensees which are still operating in the 1850-1990 MHz band on April 4, 2005.

NRECA urges the FCC to refrain from adopting any substantive changes beyond those necessary to the implementation of the cost-sharing proposal. The existing framework was developed with extensive input from the incumbent users, the PCS industry and Congress. There is no need to disrupt this carefully-tailored framework simply to satisfy the profit-driven financial desires of the commercial PCS licensees.

Respectfully submitted,

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION

By: 
Ronald K. Greenhalgh
Chief Engineer

National Rural Electric
Cooperative Association
4301 Wilson Boulevard
Arlington, VA 22203-1860

December 21, 1995